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Attachment II

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TO: Economic Support Supervisors
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Training Staff
Child Care Coordinators
W-2 Agencies
Workforce Development Boards
Job Center Leads and Managers

FROM: Amy Mendel-Clemens
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Bureau of Health Care Eligibility

BHCE/BWP OPERATIONS MEMO

No: 04-05

DATE: 02/02/2004

FS MA SC CTS

CC W-2 FSET EA

CF JAL JC RAP WIA

WtW

Other EP *

PRIORITY: HIGH

SUBJECT: **W-2 AGENCY USE OF DWS DISPLACEMENT
GRIEVANCE PROCEDURE**

CROSS REFERENCE: DWS Administrator's Memo 03-33

EFFECTIVE DATE: March 1, 2004

PURPOSE

This memorandum provides information about grievance procedures for resolving complaints of displacement of regular employees at a work site by federally subsidized Wisconsin Works (W-2) participants.

BACKGROUND

Federal law and regulations governing Temporary Assistance for Needy Families (TANF) prohibit displacement of regular workers at a work site by federally subsidized participants in this program. Accordingly, Wisconsin statutes and administrative rules prohibit such displacement under the State's primary TANF program, Wisconsin Works (W-2). Federal regulations also require states receiving federal TANF grants to establish and maintain grievance procedures for resolving complaints of alleged displacement of regular employees by federally subsidized TANF participants.

DWS Administrator's Memo 03-33 stipulates that a grievance procedure now being added to the DWS *Administration of Workforce Programs Policy and Procedure Manual* (part of the *Workforce Programs Guide* accessible on line at: http://www.dwd.state.wi.us/dws/manuals/workforce/pdf/wpg_toc.pdf), shall serve as the procedure for resolving displacement complaints under W-2 as well as under Welfare to Work (WtW) and the Workforce Investment Act (WIA).

This memo provides additional information specific to the use of this shared grievance procedure under the W-2 program. This information is also being provided in Publication DWSW-13121-P, which will be the official statement of W-2 displacement grievance policy referenced by all other documentation pertaining to that policy. This publication can be found on the DWD publications web site at: http://www.dwd.state.wi.us/dwd/publications/dws/pdf/dsw_13121_p.pdf

POLICY

WISCONSIN WORKS EMPLOYEE DISPLACEMENT GRIEVANCE POLICY

No Wisconsin Works employment position (i.e., Trial Job (TJ), Community Service Job (CSJ), or W-2 Transition (W-2 T) placement) may be operated so as to:

- Fill a vacancy created by an employer terminating a regular employee or otherwise reducing its work force;
- Fill a position when any other person is on layoff or strike from the same or a substantially equivalent job within the same organizational unit; or
- Fill a position when any other person is engaged in a labor dispute regarding the same or a substantially equivalent job within the same organizational unit.

A regular employee of a Wisconsin Works (W-2) work-training provider/employer may file a complaint with the local Job Center Complaint Coordinator (JCCC) if s/he believes that s/he or another employee was unlawfully terminated to create a vacancy for a person in a W-2 employment position funded in whole or part by federal TANF grants (i.e., TJ, CSJ or W-2 T placement), or if s/he believes that a person in a federally-funded W-2 employment position has been unlawfully placed in a vacancy created by a labor dispute.

Procedure. Complaints of displacement must follow the procedure for "Complaints/Grievances and Appeals" outlined in the DWS *Workforce Programs Guide, Part I: Administration of Workforce Programs Policy and Procedure Manual*. The relevant excerpts from that Manual are attached to this Operations Memo as Appendix 1 (see below).

Remedies. A W-2 work training provider/employer found to have engaged in one or more of the prohibited displacement practices listed above is subject to any or all of the following penalties:

- Termination of existing W-2 work training site agreements with that work training provider/employer, after ensuring that all W-2 participants at the site are appropriately reassigned to W-2 employment positions at another site.
- Termination of other DWS-program-related work training site agreements with or grants to that work training provider/employer.

- Indefinite prohibition against future W-2 or other DWS-program-related work training-site agreements between DWS or its grantee/contractors and that work training provider/employer.

Notification. W-2 work training providers/employers must inform their regular employees of the right to file a grievance under this policy, and of the procedure for doing so. Such notification may take place through such methods as:

- A sign posted in the workplace.
- A notification form signed by new employees during the hiring/orientation process (supplemented by other measures to notify current employees).
- A notification slip periodically included with employee paychecks.
- Any other means mutually agreed upon by the work training provider/employer and the local W-2 agency and approved by the Area Administrator.

Standard language for all these methods of notification is attached to this Operations Memo as Appendix 2 (see below) and is also provided in DWD publication DWSW-13121-P. Work training providers/employers must inform the W-2 agency of the notification method being used.

ADDITIONAL PROVISIONS

- Employees may initiate a group complaint. In such a case, the complainants shall choose one individual to represent the interests of the group. A group complaint shall be so designated at the first step of the grievance procedure and signed by all employees who are parties to the complaint.
- A work training provider/employer against whom multiple complaints have been lodged may ask that the Job Center Complaint Coordinator (JCCC) or the W-2 Agency consolidate complaints. The JCCC or agency may consolidate complaints where a reasonable basis for consolidation exists.
- No work training provider/employer may retaliate against an employee, his or her representative, or any witness who participates in the grievance procedure, for initiating or participating in the grievance procedure.

REVISIONS TO OTHER DOCUMENTS

The Wisconsin Works (W-2) Manual and W-2 Work Training Site Agreement (form DES-10792) are also being revised where necessary to reflect specific requirements of the grievance policy and procedure, including the requirement that employees be notified of their right to file a complaint.

W-2 AGENCY ACTIONS NEEDED

In order to implement this policy, W-2 agencies must:

- Designate agency staff responsible for hearing displacement complaints or maintain agreements with another DWS grantee/contractor in the same locality for staff from the latter to hear such complaints.
- Ensure that work training providers/employers are informed, through work training site agreements, of the provisions of this grievance policy.

- In conjunction with work training site agreements, supply work training providers/employers with the notification language provided in Appendix 2, below, and
- confirm that work training providers/employers are notifying regular employees of this grievance policy using one of the notification methods listed above.
- Notify the DWS Area Administrator in writing whenever a work training provider/employer with which that W-2 agency has a work training site agreement is found to have violated the provisions of this displacement policy.

APPENDIX 1: Displacement Grievance Procedure. The following is the procedure to be followed for resolving displacement complaints under the displacement grievance policy outlined in this Operations Memo. (Note: This procedure is excerpted from, and can also be found in the *DWS Workforce Programs Guide, Part I: Administration of Workforce Programs Policy and Procedure Manual—Section III.S: Grievances and Appeals*):

When an employer or work-training provider acting under agreement with a DWS grantee/contractor is a respondent to complaints/grievances about the administration, implementation, and operation of DWS-funded employment and training programs, including complaints of unlawful employee displacement by a DWS program participant, the following procedures must be used:

- (1) The complainant shall file a written complaint/grievance within one year after the alleged violation took place.
- (2) The grantee or contracting agency shall review the complaint/grievance to determine if it was filed within the one-year time limit and if it falls within the jurisdiction of the DWD grantee/contractor and meets grievance/complaint criteria under WIA, WtW, or TANF/W-2. If the criteria are not met, the grantee shall provide the complainant with written notice of the rejection of the complaint/grievance and the reasons for that rejection. If the criteria are met, the grantee/contractor shall provide the complainant with written notice of the acceptance. The filing date shall be included in the notice.
- (3) After accepting the complaint/grievance, the DWS grantee/contractor shall contact the respondent, investigate the complaint, and attempt to reach an informal resolution.
- (4) If an informal resolution cannot be reached, the grantee/contractor shall:
 - (a) Conduct a hearing within 30 calendar days of the filing date.
 - (b) Issue a decision to both the complainant and respondent within 60 calendar days of the filing date.
- (5) Format for written decision.
 - (a) Summary Statement that identifies issue(s) being contested and which caused the hearing to be called. Include citation of law(s), rule(s), regulation(s) policy(ies) and agreements alleged to have been violated.
 - (b) Findings of Facts which enumerates items the hearing examiner accepts as facts based upon demonstration of support (documentation) from complainant's and respondent's presentation of facts and opinions.
 - (c) Conclusion is brief summary of the facts which affirm or deny assertions made by parties at the hearing.
 - (d) Decision should be based on the conclusion(s) and provide a remedy for final resolution.
 - (e) Appeal rights must be included in the written decision. This statement of appeal rights shall include how, where and how much time the aggrieved party has to appeal the decision.

- (6) After receiving an adverse decision or no decision on a complaint/grievance within thirty calendar days, either the complainant or the respondent (or both) may file an appeal requesting a state-level independent review. This appeal must be filed with DWS within the following time limitations:
- (a) The complainant and/or respondent must file the appeal within 10 calendar days after they received the decision; or
 - (b) If the complainant and/or respondent did not receive a decision, they must file the appeal within 15 calendar days after the decision was due.
- (7) After accepting a complaint/grievance that has been appealed from the grantee/contractor level requesting a state level review, the DWS administrator, on behalf of the Governor, shall review the case and issue a final decision within 30 calendar days after the appeal was filed.
- (8) Appeal. A complaint alleging that DWS on behalf of the Governor has not issued a decision within 60 days after a complaint is filed or the party to such decision receives an adverse decision may appeal these issues to the Secretary of Labor if federal regulations governing the program in question so provide. The Secretary shall make a final determination no later than 120 days after receiving such an appeal.

APPENDIX 2: Notification Language. The following language is for use in notices to regular employees of a W-2 work training provider/employer regarding the displacement grievance policy described in this Operations Memo:

This business is proud to be a work training provider/employer for one or more federal or state workforce programs. As a work training provider/employer this business helps participants gain job skills and work experience that will help them succeed in the workforce.

As a work training provider/employer this business cannot:

- terminate a regular employee or otherwise reduce its workforce for the purpose of placing an individual in a federally subsidized employment position;
- fill a position with a federally subsidized workforce program participant when any other person is on layoff or strike from the same or a substantially equivalent job within the same organizational unit;
- fill a position with a federally subsidized workforce program participant when any other person is engaged in a labor dispute regarding the same or a substantially equivalent job within the same organizational unit.

As a regular employee of this business, you have the right to file a complaint if you believe your employer has engaged in one of these practices.

For further information, including information about how to file a complaint, contact your local Job Center Complaint Coordinator at:

[Insert contact information for nearest JCCC here]

Questions regarding this memo should be directed to your regional office.

CONTACTS

BHCE CARES Information & Problem Resolution Center

Email: carpolcc@dhfs.state.wi.us
Telephone: (608) 261-6317 (Option #1)
Fax: (608) 267-2269

Note: Email contacts are preferred. Thank you.

★Program Categories – FS – Food Stamps, MA – Medicaid, SC – Senior Care, CTS – Caretaker Supplement, CC – Child Care, W-2 – Wisconsin Works, FSET – Food Stamp Employment and Training, CF – Children First, EA – Emergency Assistance, JAL – Job Access Loan, JC - Job Center Programs, RAP – Refugee Assistance Program, WtW – Welfare to Work, WIA – Wisconsin Investment Act, Other EP – Other Employment Programs.

DWD/DWS/BDS/FB